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IN RE CAPACITORS ANTITRUST  
LITIGATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

7 MDL Case No. [17-md-02801-JD](#)

8 Case No. 14-cv-03264-JD

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10 **PRETRIAL ORDER NO. 1 FOR  
DIRECT PURCHASER PLAINTIFFS'  
TRIAL**

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12 As discussed at the pretrial conference on January 2, 2020, these procedures will apply for  
13 the jury trial of the direct purchaser plaintiffs' case.

14 **I. SCHEDULE AND TIME LIMITS**

15     1. The Court will reserve up to five weeks for the trial, beginning on March 2, 2020,  
16         at 9:00 a.m.

17     2. Trial days are Monday through Thursday. Fridays are reserved for the Court's  
18         other matters, but may be used here if the case is ready for closings or the jury is  
19         deliberating.

20     3. Trial is held each trial day from 9:00 a.m. to 2:00 p.m., with two 15-minute breaks.  
21         The Court will set aside time before the jury is seated at 9:00 a.m. as needed to  
22         address urgent matters.

23     4. Each side will have up to 3 hours for opening statements. Duplicative statements  
24         by co-parties will not be allowed. The parties are directed to meet and confer on a  
25         deadline for exchanging demonstratives to be used in each side's opening  
26         statements.

27     5. Trial time will be divided equally between the two sides. As specified in the  
28         Court's civil trial standing order, the Courtroom Deputy, Ms. Lisa Clark, will have

1 the final word on the time count.

2 **II. VOIR DIRE, JURY SELECTION AND MINI-OPENINGS**

3 1. The Court will likely seat 8-10 jurors from a 40-person venire.

4 2. The Court intends to have the parties give “mini-openings” to the venire as an

5 introduction to the case. Each side should have a 3-4 minute statement that

6 provides a high-level, non-argumentative overview of the case, and be prepared to

7 share it with the Court in rough detail at the final pretrial conference on February

8 13, 2020.

9 3. After the mini-openings, the Court will conduct the voir dire based on its own

10 questions and questions proposed by the parties.

11 4. The parties will have three peremptory challenges per side, pursuant to 28 U.S.C.

12 § 1870. For good cause, the parties may request additional peremptory challenges

13 no later than the final pretrial conference.

14 5. The Court will use the “strike and replace” method for jury selection. A

15 prospective juror not excused after a round of challenges will be deemed a member

16 of the jury and may not subsequently be challenged.

17 6. Jury selection typically takes no more than the morning session of the day the

18 venire is sworn in. The parties should be prepared to give their opening statements

19 and begin presenting witnesses on the first day of trial.

20 **III. JURY MATERIALS AND OTHER TRIAL PROCEDURES**

21 1. **Jury notebooks.** Jurors will be permitted to take notes. The parties will prepare

22 jury notebooks and bring 12 copies on the first day of trial. The notebooks should

23 be in the form of 1.5” 3-ring binders that have a plastic cover sleeve with a caption

24 page (stating the case name and number), and must include these materials:

25 a. 50 pages of blank lined paper.

26 b. A tab for witness photos. The jury will be provided with a color photo (a

27 headshot) of each witness just before that witness takes the stand. The party

28 calling the witness is responsible for providing the Courtroom Deputy with

1                   12 three-hole punched, letter-sized copies of each photo. The Courtroom  
2                   Deputy will distribute the photos to the jury. The witness must appear  
3                   exactly the same in the photo as he or she will appear on the witness stand  
4                   (e.g., same clothing, hairstyle, eyewear). The photo should include the  
5                   witness's name.

6                   c. A tab for the Final Jury Instructions, which the Court will distribute.

7                   2. **Jury questions.** The Court will allow the jurors to ask questions during the trial.  
8                   Questions will be in writing and submitted to the Court. Before the witness is  
9                   excused, the Court will share the proposed question with the parties in a sidebar  
10                  and, if warranted, pose the question to the witness.

11                  3. **Sidebars.** There will be no attorney-initiated sidebars during trial.

12                  4. **Motions.** No motions may be filed during trial without prior leave of Court.

13                  5. **Objections.** Counsel must stand to state any objections, and should do so by  
14                  simply stating the rule that forms the basis of the objection. No arguments or  
15                  elaborations should be made unless called for by the Court.

16                  6. **Witness Call.** Each party must have its witnesses for the trial day available in the  
17                  courthouse and ready to testify. Failure to have the next witness ready or to be  
18                  prepared to proceed with the evidence will usually constitute resting.

19                  7. **Witness Disclosure.** A party must disclose the identity of the witnesses it plans to  
20                  call -- as well as the exhibits to be used during the direct examination of any  
21                  witness -- by 3:00 p.m. the day before calling the witness to the stand. For  
22                  example, witnesses expected to testify on a Wednesday must be disclosed by  
23                  Tuesday at 3:00 p.m. All Monday witnesses must be disclosed by the preceding  
24                  Friday. Any party that has an objection must alert the Court as soon as possible,  
25                  and the Court will take up the objection outside the presence of the jury.

26                  8. **Interpreters.** The Court recommends that the parties agree on, and have available,  
27                  4-5 Japanese/English interpreters for this trial.

28                  9. **Evidence at trial.** The parties may offer evidence via an Elmo projector or in the

1 form of large poster boards, but the Court advises the parties that all admitted trial  
2 exhibits will be made available to the jury in electronic format for their  
3 deliberations.

4 **IV. JURY INSTRUCTIONS**

5 1. The proposed jury instructions should be broken out into two sets, preliminary and  
6 final, and should hew to the current Ninth Circuit (or ABA) model instructions to  
7 the fullest extent possible, without any variations or modifications.

8 **V. OTHER**

9 1. **Cameras in the courtroom.** At the pretrial conference, the parties indicated on the  
10 record that all were agreeable to having cameras in the courtroom. The Court will  
11 consequently plan to have the trial video recorded and made available to the public,  
12 following the procedures for the Cameras in the Courtroom Pilot Project  
13 (<https://www.cand.uscourts.gov/about/court-programs/cameras/>).

14 2. **Newer lawyers.** The Court encourages both sides to give as many substantive  
15 opportunities to junior lawyers as is possible during the trial.

16 3. **Courtroom technology.** As the trial date gets closer, the parties should request  
17 dates from Ms. Clark to come into the courtroom to set up and test their equipment.

18 **IT IS SO ORDERED.**

19 Dated: January 7, 2020



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21 JAMES DONATO  
22 United States District Judge  
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